

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARCIA K. HAJEK, Individually)
and as Personal Representative of the)
Estate of Alan E. Hajek, Deceased,)

Plaintiff,)

V.)

KUMHO TIRE CO., Inc., a foreign)
corporation, KUMHO TIRE U.S.A.,)
Inc., a California corporation, and)
FORD MOTOR COMPANY, a)
Delaware corporation,)

Defendants.)

4:08CV3157

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff's motion to dismiss Defendant Ford Motor Company ([filing 73](#)) and the objection to said motion¹ filed by Defendants Kumho Tire, Co., Inc. and Kumho Tire, U.S.A., Inc. (collectively referred to herein as the "Kumho Defendants"). ([Filing 75](#)). For the reasons stated below, Plaintiff's motion to dismiss shall be denied at this time.

Through its motion, Plaintiff requests that this matter be dismissed without prejudice as to Ford Motor Company ("Ford") because Plaintiff's investigation, to date, has not revealed sufficient evidence upon which to maintain an action against Ford. The Kumho Defendants object to said motion, however, arguing that they are entitled to keep Ford in the case for purposes of allocation of percentages of negligence and apportionment of non-economic damages under Nebraska law. The

¹ Defendant Ford Motor Company has not submitted a response to the objection asserted by the Kumho Defendants with respect to this matter.

Kumho Defendants further argue that denying Plaintiff's motion to dismiss would preserve the parties' and the court's time and resources by allowing the Kumho Defendants to file a cross-claim for such allocation and apportionment against Ford without the need to treat Ford as a new party to the case. The court agrees that considerations of judicial economy support the denial of Plaintiff's motion at this time.

IT IS ORDERED:

1. Plaintiff's motion to dismiss Defendant Ford Motor Company ([filing 73](#)) is denied;
2. The Kumho Defendants shall file a cross-claim, if any, against Ford Motor Company on or before July 23, 2009. The Kumho Defendants' failure to file any such claim on or before that date will result in this action being dismissed without prejudice as to Defendant Ford Motor Company.

June 23, 2009.

BY THE COURT:
s/Richard G. Kopf
United States District Judge